

§216.23

research, for the purpose of maintenance in a properly curated, professionally accredited scientific collection, or for educational purposes;

(iv) The unique number assigned by the National Marine Fisheries Service is on, marked on, or affixed to the marine mammal specimen or container; and

(v) Except as provided under paragraph (c)(8) of this section, the person transferring the marine mammal specimen notifies the appropriate Regional Office of the National Marine Fisheries Service of the transfer, including notification of the number of the specimen transferred and the person to whom the specimen was transferred, within 30 days after the transfer occurs.

(6) *Other transfers within the United States.* Except as provided under paragraphs (c)(5) and (c)(8) of this section, a person who salvages a marine mammal specimen, or who has received a marine mammal specimen under the provisions of this section, may not transfer that specimen to another person within the United States unless the Regional Director of the appropriate Regional Office of the National Marine Fisheries Service grants prior written authorization for the transfer. The Regional Director may grant authorization for the transfer if there is evidence that the conditions listed under paragraphs (c)(5)(i), (c)(5)(iii), and (c)(5)(iv) of this section are met.

(7) *Transfers outside of the United States.* A person who salvages a marine mammal specimen, or a person who has received a marine mammal specimen under the provisions of this section, may not transfer that specimen to a person outside of the United States unless the Assistant Administrator grants prior written authorization for the transfer. The Assistant Administrator may grant authorization for the transfer if there is evidence that the conditions listed under paragraphs (c)(5)(i), (c)(5)(iii), and (c)(5)(iv) of this section are met.

(8) *Exceptions to requirements for notification or prior authorization.* A person may transfer a marine mammal specimen salvaged under this section without the notification required in paragraph (c)(5)(v) of this section or the

50 CFR Ch. II (10–1–12 Edition)

prior authorization required in paragraph (c)(6) of this section if:

(i) The transfer is a temporary transfer to a laboratory or research facility within the United States so that analyses can be performed for the person salvaging the specimen; or

(ii) The transfer is a loan of not more than 1 year to another professionally accredited scientific collection within the United States.

[39 FR 1852, Jan. 15, 1974, as amended at 56 FR 41307, Aug. 20, 1991]

§216.23 Native exceptions.

(a) *Taking.* Notwithstanding the prohibitions of subpart B of this part 216, but subject to the restrictions contained in this section, any Indian, Aleut, or Eskimo who resides on the coast of the North Pacific Ocean or the Arctic Ocean may take any marine mammal without a permit, if such taking is:

(1) By Alaskan Natives who reside in Alaska for subsistence, or

(2) For purposes of creating and selling authentic native articles of handicraft and clothing, and

(3) In each case, not accomplished in a wasteful manner.

(b) *Restrictions.* (1) No marine mammal taken for subsistence may be sold or otherwise transferred to any person other than an Alaskan Native or delivered, carried, transported, or shipped in interstate or foreign commerce, unless:

(i) It is being sent by an Alaskan Native directly or through a registered agent to a tannery registered under paragraph (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Alaskan Native; or

(ii) It is sold or transferred to a registered agent in Alaska for resale or transfer to an Alaskan Native; or

(iii) It is an edible portion and it is sold in an Alaskan Native village or town.

(2) No marine mammal taken for purposes of creating and selling authentic native articles of handicraft and clothing may be sold or otherwise transferred to any person other than an Indian, Aleut or Eskimo, or delivered, carried, transported or shipped in interstate or foreign commerce, unless:

(i) It is being sent by an Indian, Aleut or Eskimo directly or through a registered agent to a tannery registered under paragraph (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Indian, Aleut or Eskimo; or

(ii) It is sold or transferred to a registered agent for resale or transfer to an Indian, Aleut, or Eskimo; or

(iii) It has first been transformed into an authentic native article of handicraft or clothing; or

(iv) It is an edible portion and sold (A) in an Alaskan Native village or town, or (B) to an Alaskan Native for his consumption.

(c) Any tannery, or person who wishes to act as an agent, within the jurisdiction of the United States may apply to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, for registration as a tannery or an agent which may possess and process marine mammal products for Indians, Aleuts, or Eskimos. The application shall include the following information:

(i) The name and address of the applicant;

(ii) A description of the applicant's procedures for receiving, storing, processing, and shipping materials;

(iii) A proposal for a system of book-keeping and/or inventory segregation by which the applicant could maintain accurate records of marine mammals received from Indians, Aleuts, or Eskimos pursuant to this section;

(iv) Such other information as the Secretary may request;

(v) A certification in the following language:

I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining the benefit of an exception under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(vi) The signature of the applicant.

The sufficiency of the application shall be determined by the Secretary, and in

that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The registration of a tannery or other agent shall be subject to such conditions as the Secretary prescribes, which may include, but are not limited to, provisions regarding records, inventory segregation, reports, and inspection. The Secretary may charge a reasonable fee for processing such applications, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce.

(d) Notwithstanding the preceding provisions of this section, whenever, under the MMPA, the Secretary determines any species of stock of marine mammals to be depleted, he may prescribe regulations pursuant to section 103 of the MMPA upon the taking of such marine animals by any Indian, Aleut, or Eskimo and, after promulgation of such regulations, all takings of such marine mammals shall conform to such regulations.

(e) *Marking and reporting of Cook Inlet Beluga Whales*—(1) *Definitions*. In addition to definitions contained in the MMPA and the regulations in this part:

(i) *Reporting* means the collection and delivery of biological data, harvest data, and other information regarding the effect of taking a beluga whale (*Delphinapterus leucas*) from Cook Inlet, as required by NMFS.

(ii) *Whaling captain or vessel operator* means the individual who is identified by Alaskan Natives as the leader of each hunting team (usually the other crew on the boat) and who is the whaling captain; or the individual operating the boat at the time the whale is harvested or transported to the place of processing.

(iii) *Cook Inlet* means all waters of Cook Inlet north of 59° North latitude, including, but not limited to, waters of Kachemak Bay, Kamishak Bay, Chinitna Bay, and Tuxedni Bay.

(2) *Marking*. Each whaling captain or vessel operator, upon killing and landing a beluga whale (*Delphinapterus leucas*) from Cook Inlet, Alaska, must remove the lower left jawbone, leaving the teeth intact and in place. When multiple whales are harvested during one hunting trip, the jawbones will be

marked for identification in the field to ensure correct reporting of harvest information by placing a label marked with the date, time, and location of harvest within the container in which the jawbone is placed. The jawbone(s) must be retained by the whaling captain or vessel operator and delivered to NMFS at the Anchorage Field Office, 222 West 7th Avenue, Anchorage, Alaska 99513 within 72 hours of returning from the hunt.

(3) *Reporting.* Upon delivery to NMFS of a jawbone, the whaling captain or vessel operator must complete and mail a reporting form, available from NMFS, to the NMFS Anchorage Field Office within 30 days. A separate form is required for each whale harvested.

(i) To be complete, the form must contain the following information: the date and location of kill, the method of harvest, and the coloration of the whale. The respondent will also be invited to report on any other observations concerning the animal or circumstance of the harvest.

(ii) Data collected pursuant to paragraph (e) of this section will be reported on forms obtained from the Anchorage Field Office. These data will be maintained in the NMFS Alaska Regional Office in Juneau, Alaska, where such data will be available for public review.

(4) No person may falsify any information required to be set forth on the reporting form as required by paragraph (e) of this section.

(5) The Anchorage Field Office of NMFS is located in room 517 of the Federal Office Building, 222 West 7th Avenue; its mailing address is: NMFS, Box 43, Anchorage, AK. 99513.

(f) *Harvest management of Cook Inlet beluga whales—(1) Cooperative management of subsistence harvest.* Subject to the provisions of 16 U.S.C. 1371(b) and any further limitations set forth in §216.23, any taking of a Cook Inlet beluga whale by an Alaska Native must be authorized under an agreement for the co-management of subsistence uses (hereinafter in this paragraph “co-management agreement”) between the National Marine Fisheries Service and an Alaska Native organization(s).

(2) *Limitations.* (i) *Sale of Cook Inlet beluga whale parts and products.* Au-

thentic Native articles of handicraft and clothing made from nonedible by-products of beluga whales taken in accordance with the provisions of this paragraph may be sold in interstate commerce. The sale of any other part or product, including food stuffs, from Cook Inlet beluga whales is prohibited, provided that nothing herein shall be interpreted to prohibit or restrict customary and traditional subsistence practices of barter and sharing of Cook Inlet beluga parts and products.

(ii) *Beluga whale calves or adults with calves.* The taking of a calf or an adult whale accompanied by a calf is prohibited.

(iii) *Season.* All takings of beluga whales authorized under §216.23(f) shall occur no earlier than July 1 of each year.

(iv) *Taking during 2001–2004.* The harvest of Cook Inlet beluga whales is restricted during the four-year period of 2001–2004 as follows:

(A) *Strike limitations.* Subject to the suspension provision of subparagraph (C), a total of six (6) strikes, which could result in up to six landings, are to be allocated through co-management agreement(s).

(B) *Strike allocations.* Four strikes, not to exceed one per year, are allocated to the Native Village of Tyonek. The remaining two strikes will be allocated over the 4-year period through co-management agreement with other Cook Inlet community hunters, with no more than one such strike being allocated during every other year.

(C) *Emergency provisions.* Takings of beluga whales authorized under §216.23 will be suspended whenever unusual mortalities exceed six (6) whales in any year. “Unusual mortalities” include all documented human-caused mortality (including illegal takings and net entanglements but excluding all legally harvested whales) and all documented mortality resulting from unknown or natural causes that occur above normal levels, considered for the purposes of this provision to be twelve beluga whales per year. The level of unusual mortalities shall be calculated by documenting mortality for the calendar year and subtracting twelve. The sum of this result and the carry over of unusual mortality from any previous year

from which the population has not recovered is the level of unusual mortalities for the current year. If in any year the number of unusual mortalities exceeds six whales, no strikes will be allowed in that year or in subsequent years until the population has recovered from those mortalities through foregone future harvests and natural recruitment.

(v) *Taking during 2008 and subsequent years.* (A) Co-management agreements pursuant to paragraph (f)(1) of this section may be established for 5-year intervals beginning in 2008. Agreements must include specific provisions regarding the number and allocation of strikes, hunting practices to promote consistency with limitations in paragraph (f)(2)(ii) of this section, and to improve efficiency of the harvest, mitigating measures, and enforcement. Agreements may include provisions regarding the sex composition of the beluga harvest.

(B) Strike/harvest levels for each 5-year planning interval beginning in 2008 will be determined by the recovery of this stock as measured by the average abundance in the prior 5-year interval and the best estimate of the population growth rate using information obtained in the 10 years prior to each 5-year interval. Criteria for categorizing growth rates are presented below as an algorithm using the estimated abundance, the distribution statistics for growth rates, and the date. Harvest levels are subject to the Expected Mortality Limit. The established strike levels are presented in the Harvest Table and the following algorithm will be used to determine harvest levels for each 5-year period beginning in 2008.

(1) NMFS will calculate the average stock abundance over the previous 5-year period.

(2) NMFS will calculate a population growth rates from abundance estimates for the most recent 10-year period prior to the next 5-year period.

(3) Using the abundance and growth information obtained in accordance

with paragraphs (f)(2)(v)(B)(1) and (f)(2)(v)(B)(2), NMFS will calculate the probabilities that the growth rate within the population would be less than 1 percent, less than 2 percent, or greater than 3 percent. NMFS will then use paragraphs (f)(2)(v)(B)(3)(i) and (f)(2)(v)(B)(3)(vi) of this section to select the proper cell from the Harvest Table to determine the harvest levels for the next 5-year interval.

(i) Is the average stock abundance over the previous 5-year period less than 350 beluga whales? If yes, the Harvest Table provides that the harvest is zero during the next 5-year period. If no, go to (f)(2)(v)(B)(3)(ii) of this section.

(ii) Is the current year 2035 or later and is there more than a 20 percent probability the growth rate is less than 1 percent? If yes, the harvest is zero during the next 5-year period. If no, go to paragraph (f)(2)(v)(B)(3)(iii) of this section.

(iii) Is the current year between 2020 and 2034 and there is more than a 20 percent probability the growth rate is less than 1 percent? If yes, the harvest is three whales during the next 5-year period. If no, go to paragraph (f)(2)(v)(B)(3)(iv) of this section.

(iv) Is the current year 2015 or later and is there more than a 25 percent probability the growth rate is less than 2 percent? If yes, go to the harvest table using the "Low" growth rate column. If no, go to paragraph (f)(2)(v)(B)(3)(vi) of this section.

(v) Is the current year prior to 2015 and is there more than a 75 percent probability the growth rate is less than 2 percent? If yes, go to the harvest table using the "Low" growth rate column. If no, go to paragraph (f)(2)(v)(B)(3)(vi) of this section.

(vi) Is there more than a 25-percent probability the growth rate is more than 3 percent? If yes, go to the harvest table using the "High" growth rate column. If no, go to the harvest table using the "Intermediate" growth rate column.

HARVEST TABLE

5-year population averages	"High" growth rate	"Intermediate" growth rate	"Low" growth rate	Expected Mortality Limit
Less than 350	0	0	0	-

HARVEST TABLE—Continued

5-year population averages	“High” growth rate	“Intermediate” growth rate	“Low” growth rate	Expected Mortality Limit
350–399	8 strikes in 5 years	5 strikes in 5 years	5 strikes in 5 years	21
400–449	9 strikes in 5 years	8 strikes in 5 years	5 strikes in 5 years	24
450–499	10 strikes in 5 years	8 strikes in 5 years	5 strikes in 5 years	27
500–524	14 strikes in 5 years	9 strikes in 5 years	5 strikes in 5 years	30
525–549	16 strikes in 5 years	10 strikes in 5 years	5 strikes in 5 years	32
550–574	20 strikes in 5 years	15 strikes in 5 years	5 strikes in 5 years	33
575–599	22 strikes in 5 years	16 strikes in 5 years	5 strikes in 5 years	35
600–624	24 strikes in 5 years	17 strikes in 5 years	6 strikes in 5 years	36
625–649	26 strikes in 5 years	18 strikes in 5 years	6 strikes in 5 years	38
650–699	28 strikes in 5 years	19 strikes in 5 years	7 strikes in 5 years	39
700–779	32 strikes in 5 years	20 strikes in 5 years	7 strikes in 5 years	42
780 +	Consult with co-managers to expand harvest levels while allowing for the population to grow			

(C) At the beginning of each 5-year period, an Expected Mortality Limit is determined from the Harvest Table using the 5-year average abundance. During the course of each calendar year, the number of beach casts carcasses and carcasses found floating either reported to NMFS or observed by NMFS personnel will be the number of mortalities for that year. If at the end of each calendar year this number exceeds the Expected Mortality Limit, then an unusual mortality event has occurred. The Estimated Excess Mortalities will be calculated as twice the number of reported dead whales above the Expected Mortality Limit. The harvest will then be adjusted as follows:

(1) The harvest level for the remaining years of the current 5-year period will be recalculated by reducing the 5-year average abundance from the previous 5-year period by the Estimated Excess Mortalities. The revised abundance estimate would then be used in the harvest table for the remaining years and the harvest adjusted accordingly.

(2) For the subsequent 5-year period, for the purpose of calculating the 5-year average, the Estimated Excess Mortalities would be subtracted from the abundance estimates of the year of the excess mortality event so that the average would reflect the loss to the population. This average would then be

used in the table to set the harvest level.

[39 FR 1852, Jan. 15, 1974, as amended at 59 FR 50376, Oct. 3, 1994; 64 FR 27927, May 24, 1999; 69 FR 17980, Apr. 6, 2004; 73 FR 60985, Oct. 15, 2008]

§ 216.24 Taking and related acts incidental to commercial fishing operations by tuna purse seine vessels in the eastern tropical Pacific Ocean.

(a)(1) No marine mammal may be taken in the course of a commercial fishing operation by a U.S. purse seine fishing vessel in the ETP unless the taking constitutes an incidental catch as defined in § 216.3, and vessel and operator permits have been obtained in accordance with these regulations, and such taking is not in violation of such permits or regulations.

(2)(i) It is unlawful for any person using a U.S. purse seine fishing vessel of 400 short tons (st) (362.8 metric tons (mt)) carrying capacity or less to intentionally deploy a net on or to encircle dolphins, or to carry more than two speedboats, if any part of its fishing trip is in the ETP.

(ii) It is unlawful for any person using a U.S. purse seine fishing vessel of greater than 400 st (362.8 mt) carrying capacity that does not have a valid permit obtained under these regulations to catch, possess, or land tuna